

House Licensing and Regulatory Affairs
Statement of Denise Pollicella on the Regulation of the Michigan Cannabis Industry

My name is Denise Pollicella. I am a Partner and the National Cannabis Practice Group Chair at Omnus Law, and I am in my 29th year of practice as a Michigan licensed attorney. I am a lifelong Michigander, and a proud graduate of the University of Michigan Ann Arbor and Wayne State Law. I have a corporate background as VP and General Counsel of Childtime Learning Centers. I specialize in business transactions, corporate governance and regulatory law, and 2009, I have represented small businesses in the Michigan cannabis industry. I founded and owned Cannabis Attorneys of Michigan for 15 years, and I assisted in drafting and lobbying for the MMFLA. Thank you for the opportunity to speak to you today on the state of the Michigan cannabis industry and particularly its regulation.

The State of Michigan does not support its licensed cannabis industry, full stop. It heavily regulates and taxes a still relatively new industry operating without a safety net, and does nothing to protect or support it. When I say “no safety net” I mean that cannabis companies and their owners have no bankruptcy protection, and have limited access to the traditional business infrastructure that most business owners take for granted. Insurance, banking fees and mortgage rates are many times more expensive than they are for non-cannabis businesses. This despite the fact that cannabis is a legal good in commerce in our state.

Exacerbating this problem is the complete lack of enforcement of illicit marijuana activity in the State of Michigan, which has allowed a large and continuous supply of black-market marijuana to flow into Michigan, some of which undoubtedly makes its way into the licensed industry. This marijuana is untested and unsafe in every way that the licensed industry was meant to combat, and it creates an unstable market suffering from significant oversupply, keeping prices deflated and driving more and more companies out of business.

And licensed businesses are being taxed out of existence. Certainly, tax revenue was and remains an excellent inducement to allowing the commercial manufacturing and retail sale of marijuana. However, the taxes on the industry are entirely too oppressive, because cannabis businesses are subject to IRC 280(e), meaning they cannot take ordinary business deductions on their federal tax returns, making their effective tax rates significantly higher than that of non-cannabis businesses. To add insult to injury, the CRA is the only agency in the State of Michigan which requires its licensees to clear its State of Michigan tax bill in full before renewing its license. In other words, a voluntary tax payment plan, which any other business in Michigan can utilize, is not available to the only industry in Michigan that has no bankruptcy protection and higher federal taxes than any other industry.

Finally, they are being oppressively overregulated. Director Hanna was appointed with the broad mandate of increasing enforcement. However, because the scope of the CRA’s authority lies only within the licensed cannabis industry, all of the CRA

enforcement efforts have been directed at licensed cannabis business, and there does not seem to have been any effort at balance. The CRA's default position is that everyone is a criminal, and it is their job to catch and punish every single licensee with maximum force. To be clear, this has been its default position since before it was even the MRA. When the first emergency regulations came out in 2019, they were sparse and full of ambiguities. We all needed assistance interpreting them. We would often call the MRA and ask for help, and three to six months later, the first violations started showing up, penalizing licensees for not understanding how to implement a brand new rule. My first instinct, having worked in the licensed childcare industry and in liquor control, was to encourage my clients to self-report violations, but every self-reported violation ended with a compliance complaint.

The CRA does not distinguish between the innocent mistake of a busy, highly-regulated business and the nefarious conduct of an illegal drug dealer. There is no middle ground. The licensed cannabis industry has good and bad operators like every other industry, but there is no prosecutorial discretion being exercised, and the fines are exorbitant. This type of enforcement disincentivizes compliance, self-reporting, and licensing, and that is exactly what has happened.

These are endemic and long-standing problems that have not been addressed, and unfortunately the industry has checked out. These business do not feel supported or listened to. They feel punished for being licensed, and there is no incentive to operating in a compliant manner any longer.

There are some complex problems here, but also some easy solutions. One would be to end the requirement that licensees get a Michigan Treasury tax clearance every year. Another would be to license companies for 2 years at a time. Another would be for the AG to ramp up enforcement and prosecution of black-market operators. Some very simple steps would go a long way toward creating the foundation of support this industry needs to survive and thrive, and our state needs it to thrive. We are primed to export marijuana throughout the Midwest as soon as it becomes federally legal, and we must have a strong industry to compete in a national market.

This industry requires robust regulation, but it also requires support. Licensed cannabis has greatly benefitted Michigan's economy, not to mention the thousands of people who now use medical cannabis here without fear of prosecution. The business owners in this industry are by and large good people, family people, our fellow Michiganders. They provide jobs that cannot be outsourced and manufacture a product that cannot be outsourced. They repurpose blighted buildings in areas nobody else will develop. They are doing their best in an increasingly hostile environment and they are losing. The State of Michigan and the CRA must do a better job of balancing taxation and regulation with support for these businesses and this industry.

Thank you for your efforts on our behalf, and for your time today.

